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DATE: January 11, 2008

TO: Alderman Brian E. Yates, Chairman
and Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development

SUBJECT: **Docket Item #194-06** – Newton Historical Commission recommending that the Demolition Delay Ordinance, Section 22-44, be amended.

CC: Board of Aldermen
Mayor David B. Cohen
Newton Historical Commission
John Lojek, Commissioner of Inspectional Services

RECOMMENDATION: *APPROVAL OF THE PROPOSED AMENDMENTS TO SECTION 22-50*

At the January 14, 2008 Zoning and Planning Committee meeting, Chairman Yates plans to take up a number of docket items related to the subject of historic preservation. **Docket Item #194-06** is the subject of this memorandum, which proposed changes to the City's Demolition Delay Ordinance (*then Sec.22-44, now Sec.22-50 of the City's Revised Ordinances of 2007*) and was initially docketed by the Newton Historical Commission in an effort to:

- Reflect actual administrative practices vs. those specified in the current ordinance;
- Reduce the number of non-historic properties or building elements that the Commission review; and
- Help reduce ambiguities in the ordinance.

Several Planning Department memoranda reviewed draft language for proposed changes to the Demolition Delay Ordinance, and were discussed with the Zoning and Planning Committee in September and November 2006. On both September 11, 2006 and November 13, 2006, this docket item was held in Committee following much discussion. Finally, at the November 27, 2006 Committee meeting, the item was approved as amended (by a vote of 4-2-1 with Lappin and Weisbuch opposed; Sangiolo abstaining). At the December 4, 2006 meeting of the full Board of Aldermen, Docket Item #194-06 was recommitted to the Zoning and Planning Committee.

I. ADDITIONAL BACKGROUND

The Demolition Delay Ordinance was adopted by the Board of Aldermen in 1986 to ensure the preservation and enhancement of Newton's historical and cultural heritage by preserving, rehabilitation, or restoring, whenever possible, the buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

Of the 351 local governments in the Commonwealth, 121 cities and towns have demolition review ordinances. A comparison of ordinances of other communities, as requested in Docket Item #434-06 is included as an attachment to this memorandum (SEE "ATTACHMENT A").

The Demolition Delay Ordinance requires that any building 50 or more years old must be reviewed by the Newton Historical Commission for either "total demolition" or "partial demolition" of an historically significant building or structure. The procedure for review by the Commission includes the following steps:

- ✓ **Building Permit Application for Demolition.** Once a request for demolition is received by the City, the Newton Historical Commission has fifteen days to make a determination as to whether or not the building is "historically significant." The definition of "historically significant building or structure" provides guidance to the Commission in making this determination.
- ✓ **Determination of Historical Significance.** If a building or structure has been determined to be historically significant, the Commission is required to hold a public hearing within 45 days of the application date to consider whether the building or structure should be "preferably preserved." The Commissioner of Inspectional Services may grant a Building Permit for demolition if the building or structure is determined to be NOT "historically significant."
- ✓ **Determination that the Building or Structure should be Preferably Preserved.** If the Commission finds that the demolition proposed would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City, then the Commission shall find that the building or structure should be preferably preserved. Such a designation would begin a one-year delay on the demolition of the building or structure or certain architectural elements of the structure. No Building Permit for demolition or exterior renovation shall be issued by the Commissioner of Inspectional Services after such a determination has been made UNLESS the applicant has:
 - made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
 - has agreed to accept a demolition permit on specified conditions approved by the Commission.

Although certain applicants and their architects (or contractors) may complain about the imposition of a one-year demolition delay, in my opinion, the Newton Historical Commission makes every effort to work with applicants to waive this delay, usually at the same meeting where the delay is imposed, based on their review of the plans for the replacement structure or element, if Commission members find that the proposed new

structure or element would be in keeping with the existing historically significant building or structure and/or character of the neighborhood.

II. PROPOSED REVISIONS AND RECOMMENDATION FOR ACTION

In the fall of 2007, the Planning Department again discussed proposed changes to the Demolition Delay Ordinance at several Newton Historical Commission meetings. Local architects who had expressed interest in this subject were invited to attend those Commission meetings. In the attached draft Ordinance (*now Sec.22-50*), the proposed new text and revisions are shown in highlighted (underlined) text, while the text that is proposed to be removed is shown with a line drawn through it (~~strike-through~~) | (*SEE “ATTACHMENT B”*).

The proposed changes to the Demolition Delay Ordinance are listed, as follows:

A. Sec.22-50(b) Definitions. Revised definition for “Partial demolition.”

“Partial demolition” is defined in the existing ordinance as “(t)he pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements that define or contribute to the historic character of the structure.”

This definition does not provide clear guidance to the Local Building Inspectors or Preservation Planners, who are often asked whether or not a certain demolition project needs to be reviewed under the ordinance. Our interpretations have often been conservative, results in many applications being referred to the Newton Historical Commission for their review. For that reason, the Commission monthly meeting agendas have been very long.

More recently, Planning Department staff has tried “informally” to interpret the definition of “partial demolition” in a way that would give more discretion to the Preservation Planners for demolition review. The interpretation has changed over time. In August, September and October 2007, the Newton Historical Commission held time on their regular meeting agendas to discuss possible changes to the Demolition Delay Ordinance and, in particular, the definition of “partial demolition.”

The attached draft ordinance includes a more complete definition of “partial demolition” that details which (demolition) projects require a public hearing before the Commission, which projects that require Commission review that may be reviewed and approved by Commission staff, and which projects are considered to be de minimus and requires no Commission or staff review. If approved by the Board of Aldermen, it is our hope and expectation that future meetings of the Newton Historical Commission would have substantially reduced agendas.

B. Sec.22-50(c) Procedure. New language to reflect current practices.

According to the current Demolition Delay Ordinance, *now Section 22-44(c)(2)*, an application for a demolition permit is submitted to the Commissioner of Inspectional Services, who then has seven (7) days to submit a copy of the application to the Newton Historical Commission for a determination as to whether the building or structure is considered to be “historically significant,” and if so, whether it should be preferably preserved. This language does not reflect current practices.

First, it is important to note that the Demolition Delay Ordinance was initially adopted before the Newton Historical Commission had staff to receive or review applications for demolition and did not anticipate the role that staff would have in working with applicants and accepting their applications. Because of the other duties and responsibilities of the Commissioner of Inspectional Services, the actual day-to-day practices were modified many years ago so that, as currently administered, the Commissioner has no direct role in the process.

In fact, there is no application for demolition permit. A Building Permit application is filed at the Inspectional Services front counter, which may or may not mention demolition. The Local Building Inspectors and Preservation Planners are involved in making a determination as to whether or not “total demolition” or “partial demolition” is included as part of the application. If demolition is involved, the applicant is asked to complete a Demolition Review Application, which provides the Preservation Planners and Newton Historical Commission with a more complete description of the proposed demolition. *All changes in language proposed for Section 22-50(c) reflect current practices and are designed to update and streamline the procedures.*

C. **Sec.22-50(e) Non-Compliance.** New language to address violations.

Occasionally, there have been problems with violations of the Demolition Delay Ordinance where a property owner decides to demolish his/her “historically significant” building or structure, after the Newton Historical Commission has determined that the building or structure should be “preferably preserved,” and during the term of the one-year demolition delay. In those cases, the Commission is authorized to place a hold on the future development of the site for *two years*. Such blatant violations rarely take place.

A far more common problem concerns the waiver of the one-year delay based on plans submitted by the applicant and approved by the Newton Historical Commission. While the majority of applicants move forward with their approved plans and buildings without incident, each year there are a few cases where the approved plans are ignored and construction moves forward on a building or structure which the Commission has never reviewed. Because there is no clear path set out in the ordinance to address these issues, the Commission has dealt with these problems on a case by case basis depending on the extent of the violation and the level of completion of a project when they are made aware of the problem. In all cases, the Newton Historical Commission has been reluctant to stop work on a partially completed building for the two years specified in the ordinance and has searched for an alternate solution. While this process allows the Commission flexibility, a clear and consistent path is needed for dealing with these problems as soon as they arise which clearly states the penalties involved for applicants and the actions that the Commission can take. *The Commission suggests that the Sec.22-50(e) be amended to insure that this process is clearly stated for all parties and can be consistently applied in the future.*

D. **Sec.22-50(k) Applicability.** New section.

As currently written, the Demolition Ordinance does not distinguish between demolition which is requested because of an owner's personal needs or wishes and demolition which is required because a building or a portion of a building has been so substantially damaged by fire, storm or other disaster that demolition is the only option. While this issue does not come up often, when it does arise there is often an unintended delay before an intermediate process can be worked out. The Newton Historical Commission believes that owners who have suffered a loss of this kind should not be penalized and have proposed new language and a new **Sec.22-50(k)** that would provide an exemption from the usual demolition review in these situations.

The Planning Department strongly supports demolition review and has worked (*since this docket item was referred back to the Zoning and Planning Committee*) with the Newton Historical Commission to draft proposed changes to the Demolition Delay Ordinance that follow current and best practices. Several local architects who had expressed interest in this subject were invited to Newton Historical Commission meetings when proposed changes were discussed.

RECOMMENDATION: ***APPROVAL OF THE PROPOSED AMENDMENTS TO SECTION 22-50***

ATTACHMENTS

ATTACHMENT A: ***Comparison of demolition review ordinances of other communities.***

ATTACHMENT B: ***Draft Demolition Delay Ordinance (now Sec.22-50) with proposed new text and revisions highlighted.***

Demolition Delay Review and Comparison 1/11/2008

ATTACHMENT "A"

Community	Length of Demolition Delay	Year adopted	Criteria Used to determine application	Commission review or staff review	Consider Partial Demolition	Definition used for partial demolition	Can delay be waived and how
<u>Lexington</u>	Limited to 18 months; requires at least 6 months. Recently placed limit on length of delay - previously delay was unlimited; Also recently added a demolition by neglect clause.	1986	Age 50-years old, National / State Register Listing, on town's list of historic resources, or Commissions determination of significance.	Support from building department, intern, and outside consultant to determine application subject to review. Commission has review authority.	Y	Recently altered, formerly read "Any act of pulling down..." and now read as "Any act of substantially pulling down..." Further criteria exists for review as text in the ordinance. - the removal of roofs;- the removal of exterior architectural features and/or interior framing members of more than one exterior wall of a building;- the gutting of a building interior including exterior architectural features of	Yes, the Historical Commission can waive delay if: (1) There is no reasonable likelihood that someone is willing to purchase, preserve, rehabilitate or restore building; or (2) The Commission is satisfied that for at least six months the owner has made reasonable efforts to locate a purchaser to preserve, rehabilitate and restore building, and unsuccessful.
<u>Arlington</u>	12 Months	1990	National Register listing or listing in towns inventory of historic properties.	Support from building department, but historical commission's determination.	Y	A structure is considered to be demolished if it is destroyed due to the owner's failure to maintain a watertight and secure structure. A structure shall also be considered to be demolished if more than twenty-five percent (25%) of the front or side elevations are removed or covered. Each elevation shall be calculated separately.	Yes, the Historical Commission can waive delay if: (a) the Commission determines there is no likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore building, or (b) the Commission is satisfied that for at least twelve months, the owner has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and unsuccessful.

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<u>Brookline</u>	12 Months, 18 months for National Register properties.	1989	National / State Register Listing or eligibility, in a local district, building important historically or architectually, or Commissions determination of significance.	2 preservation planners on staff make initial determination. Final determination made by commission.	Y	Removing roof, or removing 25% of the structure; (ii) moving a Building from its site with no permitted new location; (iii) substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) the systematic removal, effacement or	Yes, if commission determines building cannot be preserved, restored, rehabilitated or moved, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition. B. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety.
<u>Cambridge</u>	6 Months	1978	Age-Building over 50 years, National / State Register Listing, important architectually, or historically.	7 preservation planners on staff make initial determination of significance. The Commission may delegate to the Commission Staff authority to determine without any hearing that a building is not a preferably-preserved significant building. Final determination made by commission.	Y	1) Removal of a roof; 2) Removal of one side of a building; 3) gutting of a building's interior to the point where exterior features (windows, etc.) are impacted; and 4) Removal or more than 25% of a structure.	Yes, the commission can waive delay if: (i) Commission determines there is no likelihood that someone is willing to purchase the preferably-preserved building or willing to preserve, rehabilitate, or restore said building, or (ii) that the Commission is satisfied that for six months the owner has sought a person willing to purchase building and to preserve, rehabilitate, or restore and unsuccessful.

Demolition Delay Review and Comparison 1/11/2008

ATTACHMENT "A"

<u>Natick</u>	6 Months	Approximately 1990	National / State Register listing or listing in towns inventory .	Support from building department, but historical commission's determination.	Y	Definition of demolition includes "Any act of pulling down, destroying, or razing a structure, or any part of attached portion thereof." Attached portion is not further defined.	Yes the commission can waive delay if: 1. The Commission is satisfied that the applicant has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, move, rehabilitate or restore the building or structure; or 2. The applicant has agreed to accept such permit subject to conditions approved by the commission.
<u>Weston</u>	6 Months	1998	"Significant Building" – constructed by 1945, or unknown age, National Register Listed; or included within a "significant area" or outlined in the 1993-1994 Historical Resources Survey; or is documented on a Cultural Resources Inventory form prepared by the Commission;	Support provided by town planner and outside consultant, but review authority is with historical commission.	Y	Definition of demolition includes "Any act of pulling down, destroying, razing or moving a building or any portion thereof, or commencing the work of moving or of total or substantial destruction or a building or portion thereof, with the intent of completing the same." Substantial is not further defined.	Yes the commission can waive delay if: i) the Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building, or ii) the Commission is satisfied that for at least six months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful; iii) the Commission has determined that the proposed moving or demolition may be conducted in a specified manner so as not to be detrimental to the historical or architectural heritage or resources of the Town.
<u>Duxbury</u>	6 Months	1998	Age- buildings built over 75 years of age	Support from Inspectional Services, Building Inspector has initial review, final review with historical commission.	Y	"Substantial destruction" not defined, according to Inspectional Services walls wings of buildings ect over 75 years old would be subject to review.	Yes the commission can waive delay if: Commission is satisfied that the applicant has made a reasonable but unsuccessful effort to locate a purchaser to preserve, relocate or rehabilitate the building or structure.
<u>Framingham</u>	6 months	1991	Buildings over 50 years of age or National / State Register Listing / eligibility, or Commissions determination of significance.	Support from building department, but historical commissions determination.	Y	Any building in whole or in part over 50 years old.	Yes commission can waive delay if (i) the Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building, or (ii) the Commission is satisfied that for at least six (6) months the owner has made reasonable efforts to locate a purchaser to preserve, rehabilitate or restore the subject building, and unsuccessful.

Demolition Delay Review and Comparison 1/11/2008

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<u>Holyoke</u>	4 months	2000	Buildings over 50 years of age, National Register listed, on town's list of historic resources, or within 200 feet of any National or local district.	Building commissioner makes initial determination and notifies commission of application, but review authority is with commission.	Y	Applies to portions of buildings if commission determines building is historic.	Yes, only for hazardous conditions.
<u>Methuen</u>	6 months. <u>Never used and demo delay repealed in 2007.</u>	2001	Historically Significant Building or Structure - important historically or architecturally listed in, the National Register / State Register, located within 200 feet of the boundary of any federal, state or local historic district; on local or state inventory or in existence on or before 1875.	1 preservation planner on staff in Planning Department for commission support.	NA	NA	Yes commission can waive review if: Committee is satisfied that applicant demolition permit has made a reasonable and unsuccessful effort to locate a purchaser for the structure willing to preserve, rehabilitate or restore the structure, or has agreed to accept Committee's conditions. During the six (6) month review period, the Committee shall invite the Applicant to participate in an investigation of alternatives to demolition.

DRAFT – for discussion purposes

Tracked changes were discussed with the NHC on Sept.27 and Oct.25

Excerpted from *Revised Ordinances of Newton, Massachusetts 2007*

Sec. 22-44 (now Sec.22-50). Demolition of historically significant buildings or structures.

(a) Intent and Purposes. This ordinance is adopted in furtherance of the policy set forth in the City of Newton's Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) Definitions. For the purposes of section 22-44, the following words and phrases have the following meanings:

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The Commissioner of Inspectional Services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

Items requiring review by the Newton Historical Commission at a public hearing:

- Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.
 - Additions or Rear Ells;
 - Attached Garages;
 - Dormers;

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- Roofs, except flat roofs when they are on secondary elements of the structure and where demolition will not alter the massing of the existing structure or a significant architectural feature;
- Chimneys;
- Porches and porch roofs, except open rear or side entrance porches which consist of only a set of stairs, an entrance platform and a roof which are utilitarian in design and do not contribute to the architectural significance or character of the building;
- Bays and bay windows; and
- Removal of 25% or more of any single exterior wall surface, which includes exterior wall surfaces that would be enveloped by subsequent additions.
- Partial demolition of any architecturally significant detail including but not limited to the following items.
 - Brackets;
 - Crown molding; and
 - Porch columns and railings.

Partial demolition of the following items that require Commission review may be reviewed and approved by Commission staff without a public hearing if plans indicate:

- Construction of new dormers which encompass less than 50% of the roof surface;
- Construction of new additions which impact 25% or less of a single exterior wall;
- Construction on existing flat roofs so long as the flat roof is considered a secondary element of the structure and where demolition will not alter the massing of the existing structure or a significant architectural feature;
- Repair or replacement of existing and original porches with similar materials to match existing; and
- Removal of less than 50% of the roof structure.

Partial demolition of the following items are considered to be de minimus and application requires no Commission or staff review:

- Repair or replacement of existing exterior cladding (e.g., clapboards, shingles, masonry, etc.);
- Repair or replacement of existing roof surfaces;
- Repair or replacement of existing gutters;
- Repair or replacement of existing doors and windows, including casings and frames; and
- Demolition of open decks and staircases which are not original to the structure.

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Historically significant building or structure: Any building or structure which is in whole or in part fifty or more years old and which

- (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
 - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
 - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or
 - c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

Preferably preserved: An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) Procedure.

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this ordinance, as well as any other applicable law, statute, ordinance or regulation.
- (2) ~~Within seven (7) days from the filing of an application for a demolition permit, the commissioner shall send a copy of each application to the commission for a determination by the commission as to whether the building or structure which is the subject of such application is historically significant, and if so, whether it should be preferably preserved. The commissioner shall also send to the commission the name, address and telephone number of the owner of the building or structure which is the subject of such application.~~

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If any applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:

- a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;*
- b) photographs of all existing facade elevations of the building or structure to be totally or partially demolished;*
- c) a description of the proposed plans for demolition and the reason(s) therefore.*

- (3) Within fifteen (15) days after the commission's receipt of a demolition ~~permit~~ review application, the commission shall make a determination as to whether the building is historically significant and shall notify, ~~in writing,~~ the commissioner of this determination. If the building or structure has been determined not to be historically significant, a copy of the commission's determination shall be sent to the building or structure's owner. A copy of the commission's determination shall also be sent to the building or structure's owner and to the applicant for the demolition permit. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the

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appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:

- a) does not receive written notice within ~~fifteen~~forty-five (~~15~~45) days after the commission's receipt of a demolition ~~review~~permit application that the building or structure is historically significant; or
- b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.

- (5) ~~Before receiving a demolition permit for a building or structure determined to be historically significant, the applicant for such permit and the owner of the building or structure if different from the applicant, shall apply to the commission for a determination as to whether the building or structure is preferably preserved and shall provide the commission with the following information:~~

When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:

- ~~a) a photocopy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located, together with all abutting properties;~~
- ~~b) photographs of all existing facade elevations of the building or structure to be totally or partially demolished;~~
- ~~c) a description of the proposed plans for demolition and the reason(s) therefor; and~~

- ~~a)d)~~ in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and

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~~b)e)~~ if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

(6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit, and to the owner of the building or structure if different from the applicant. No demolition permit shall be issued until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

- a) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
- b) has agreed to accept a demolition permit on specified conditions approved by the commission.

If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff.

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- (7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.
- (8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.

(9) If the applicant is someone other than the owner or his designated agent, a demolition review application cannot be filed until the commission receives written authorization from the current owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section of the ordinance shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A

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copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this ordinance shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this ordinance was obtained and unless such permit was fully complied with, ~~the commissioner shall not issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons or property.~~ including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such noncompliance, and the commission has accepted applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons or property.

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstitution of the fine for non-compliance with this ordinance.

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(f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.

(i) *Severability.* In case any section, paragraph, or part of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.

(j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this ordinance.

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(k) Applicability.

1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall issue for the reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure, which was damaged by such catastrophic event.

2) This subsection shall not apply to buildings or structures, which have been designated as landmarks pursuant to Sec. 22-92 of the Revised Ordinances.

(Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V-98, 12-16-96; Ord. No. V-99, 12-16-96)